

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

AARON THAD PAYNE,
Petitioner,
v.
ELVIN VALENZUELA, Warden,
Respondent.

Case No. CV 15-3243 FMO (AFM)

ORDER ACCEPTING FINDINGS AND RECOMMENDATIONS OF UNITED STATES MAGISTRATE JUDGE

Pursuant to 28 U.S.C. § 636, the Court has reviewed the Petition, the records on file and the Report and Recommendation of United States Magistrate Judge. Further, the Court has engaged in a *de novo* review of those portions of the Report to which objections have been made.

In the Objections, petitioner contends for the first time that he is entitled to equitable tolling of the one-year limitations period of 28 U.S.C. § 2244(d) because of alleged restrictions on his access to legal materials in the prison law library. (Objections at 2-4.) A limitation on law library access, however, is a normal incident of prison life, not an extraordinary circumstance for purposes of equitable tolling. *See Ramirez v. Yates*, 571 F.3d 993, 998 (9th Cir. 2009) (holding that petitioner was not entitled to equitable tolling for limited access to the law library).

1 and copy machine because to conclude otherwise “would permit the exception to
2 swallow the rule” that equitable tolling be rarely granted).

3 This circumstance is not rendered extraordinary when considered in
4 combination with petitioner’s lack of legal sophistication and limited ability to read
5 and write. *See, e.g., Rasberry v. Garcia*, 448 F.3d 1150, 1154 (9th Cir. 2006)
6 (holding that “a pro se petitioner’s lack of legal sophistication is not, by itself, an
7 extraordinary circumstance warranting equitable tolling” of the AEDPA limitations
8 period); *Fisher v. Johnson*, 174 F.3d 710, 714 (5th Cir. 1999) (ignorance of the
9 limitation period did not warrant equitable tolling); *Miller v. Marr*, 141 F.3d 976,
10 978 (10th Cir. 1998) (petitioner’s alleged lack of access to law library materials and
11 resulting unawareness of the limitation period until it was too late did not warrant
12 equitable tolling); *Gazzeny v. Yates*, 2009 WL 294199, at *6 (C.D. Cal. Feb. 4,
13 2009) (noting that “[a] prisoner’s illiteracy or ignorance of the law do not constitute
14 extraordinary circumstances” for purposes of tolling of the AEDPA statute of
15 limitations); *Singletary v. Newland*, 2001 WL 1220738, at *2 (N.D. Cal. Sept. 28,
16 2001) (“A misunderstanding of the complexities of federal habeas relief is not
17 considered an extraordinary circumstance or external factor for purposes of
18 avoiding an otherwise valid dismissal, as complete illiteracy does not even provide
19 a sufficient basis for equitable tolling.”); *Ekenberg v. Lewis*, 1999 WL 13720, at *2
20 (N.D. Cal. Jan. 12, 1999) (“Ignorance of the law and lack of legal assistance do not
21 constitute such extraordinary circumstances.”); *Bolds v. Newland*, 1997 WL
22 732529, at *2 (N.D. Cal. Nov. 12, 1997) (“Ignorance of the law and lack of legal
23 assistance do not constitute such extraordinary circumstances.”); *see also Barrow v.*
24 *New Orleans S.S. Ass’n*, 932 F.2d 473, 478 (5th Cir. 1991) (holding that neither
25 “lack of knowledge of applicable filing deadlines,” nor “unfamiliarity with the legal
26 process,” nor “lack of representation during the applicable filing period,” nor
27 “illiteracy,” provides a basis for equitable tolling).

Accordingly, equitable tolling is not warranted on the grounds raised by petitioner in the Objections. Moreover, petitioner's claims fail on the merits, as discussed fully in the Report and Recommendation. The Court therefore accepts the findings and recommendations of the Magistrate Judge.

IT THEREFORE IS ORDERED that (1) the Report and Recommendation of the Magistrate Judge is accepted and adopted; (2) respondent's Motion to Dismiss the Petition as untimely is granted (ECF No. 20); (3) petitioner's Motion for Stay and Abeyance is denied (ECF No. 27); and (4) Judgment shall be entered dismissing this action with prejudice.

DATED: January 25, 2016

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